



PATROL GUIDE

Section: Arrests		Procedure No: 208-67	
FOLLOW-UP INVESTIGATIONS ON "DECLINE PROSECUTION" ARREST CASES			
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PURPOSE

To determine if a case designated "Decline Prosecution" by the District Attorney's office can be re-opened and prosecuted after a follow-up investigation.

SCOPE

To ensure that all arrests effected by uniformed members of the service are prosecuted to the fullest extent of the law and in keeping with the Department's arrest strategy to reduce crime and disorder, the Department, in cooperation with all five county District Attorney's Offices has implemented a follow-up investigation initiative for cases that have been designated "Decline Prosecution." Designated "Decline Prosecution" arrest cases will be re-opened and prosecuted, if a requested follow-up investigation is conducted and specific additional information (e.g., interviews, evidence, line-ups, etc.) is obtained.

PROCEDURE

When a District Attorney's office in a "Decline Prosecution" arrest case requires specific additional information:

ADA CONCERNED

1. Forward to borough Court Section, letter indicating the type of additional information (e.g., interviews, evidence, line-ups, etc.) required to re-open case for prosecution.

BOROUGH COURT SECTION

2. Immediately forward request to commanding officer concerned.

COMMANDING OFFICER/ COUNTERPART

3. Ensure that the arresting officer, anti-crime unit, precinct detective squad, Burglary/Robbery Apprehension Module (BRAM), etc., expeditiously complies with the District Attorney's request.

UNIFORMED MEMBER OF THE SERVICE ASSIGNED

4. Immediately contact assigned Assistant District Attorney, whose name and telephone number are indicated on form letter, for instructions if the follow-up investigation yields positive results.
 - a. If it is determined that the defendant is to be re-arrested on the same charge that was designated "Decline Prosecution":
 1. Issue a new arrest number
 2. Fingerprint prisoner
 3. Notify the Borough Court Section supervisor.

COMMANDING OFFICER/ COUNTERPART

5. Have **DECLINE PROSECUTION ARREST CASE REPORT (PD244-1515)** prepared.
6. Ensure that **REPORT** is forwarded to borough Court Section within ten business days of receiving District Attorney's request, regardless of outcome of investigation.

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**BOROUGH
COURT
SECTION**

7. Maintain a "Decline Prosecution Arrest Case" log.
 - a. Forward monthly report to Criminal Justice Bureau.

NOTE

*Failure to return the completed **REPORT** within this time frame will possibly result in the District Attorney's Office not re-opening the arrest case for prosecution. Whenever a **DECLINE PROSECUTION ARREST CASE REPORT** is prepared and forwarded to the borough Court Section, a duplicate copy of the **REPORT** will be prepared for the precinct/command file.*

**ADDITIONAL
DATA**

*The **DECLINE PROSECUTION ARREST CASE REPORT** will not be prepared when the District Attorney's Office form letter indicates that a "Decline Prosecution" case cannot be re-opened for prosecution. In such cases, the form letter will serve to inform commanding officers so that, where necessary, they may instruct, train, and/or monitor the uniformed member of the service concerned.*

**FORMS AND
REPORTS**

DECLINE PROSECUTION ARREST CASE REPORT (PD244-1515)

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Section: Prisoners		Procedure No: 210-13	
RELEASE OF PRISONERS			
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PURPOSE

To release a person taken into custody when further investigation reveals that the person arrested did not commit the offense or any related offense or it is determined that no offense has been committed or when directed by an Assistant District Attorney that the arrest is to be voided.

DEFINITIONS

VOIDED ARREST – When an arrest is made by a uniformed member of the service or a civilian, and there is reasonable cause to believe the prisoner did not commit the offense, or any related offense, or it is determined that no offense has been committed, the member of the service concerned must immediately release the prisoner and comply with this procedure.

DECLINE PROSECUTION – The District Attorney has prosecutorial discretion and may decline to prosecute a case for a variety of reasons even though probable cause for the arrest exists. Some examples are: cases where the evidence is legally sufficient to prosecute, but must be corroborated; or cases where prosecution is declined in the interest of justice; etc. In these instances, the Assistant District Attorney is required to issue a Decline Prosecution Letter. In such circumstances, members of the service should be guided by *Patrol Guide 216-16, "Release of Prisoners at the Complaint Room at Direction of the Assistant District Attorney."*

Additionally, there may be circumstances wherein an Assistant District Attorney directs that an arrest be voided and refuses to issue a Decline Prosecution Letter despite the arresting officer's good faith belief that probable cause existed for the arrest. In those instances, members of the service should be guided by this procedure.

PROCEDURE

When an arrest is made by a uniformed member of the service or a civilian, and there is reasonable cause to believe that the prisoner did not commit the offense in question or any related offense.

ARRESTING OFFICER

1. Confer with patrol supervisor and obtain consent for release of prisoner.
 - a. If unavailable, confer with desk officer/borough court section supervisor.
 - b. If the arresting officer, prior to removal of the prisoner to the police facility/borough court section, has reasonable cause to believe that the prisoner did not commit the offense charged and the patrol supervisor is not available for conferral, the prisoner may be released immediately and the patrol supervisor/desk officer will be notified as soon as possible.
 - (1) In all "Release of Prisoner" cases, the desk officer of the command of occurrence **MUST** be informed of the circumstances of the release
 - (2) A prisoner may be released by the Department at any time from the initial custody until the arraignment in the courtroom.
 - c. If prisoner has been removed from police facility/borough court section facility, confer with supervisor assigned to court.

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- PATROL SUPV./** 2. Authorize release of prisoner if in agreement with arresting officer.
DESK OFFICER 3. Verify that all property removed from the person is returned.
/BOROUGH
COURT
SECTION
SUPERVISOR
- ARRESTING** 4. Make **ACTIVITY LOG (PD112-145)** entry of facts of the release of
OFFICER prisoner.
- SUPERVISOR** 5. Examine and initial arresting officer's **ACTIVITY LOG** entry.
AUTHORIZING
/NOTIFIED OF
RELEASE
- ARRESTING** 6. Prepare **OLBS ARREST WORKSHEET (PD244-159)**, immediately, for
OFFICER released prisoner.
a. Indicate under the "Narrative" section the reason the prisoner was released and arrest voided and include:
(1) Statement indicating property was returned, if applicable
(2) Names of witnesses, if any
(3) Supervisor who authorized or was notified of release of prisoner
(4) Time of release.
7. Void the arrest using the "Omniform System" under "Arrest Processing Type" and select the "Voided Arrest" option, which will still generate an arrest number.
- DESK OFFICER** 8. Review circumstances of arrest.
/SUPERVISOR
CONCERNED
a. If arrest voided by arresting/assigned officer in "Omniform System":
(1) Review **OLBS ARREST WORKSHEET/OMNIFORM – ARREST REPORT** and ensure that the "Narrative" section include reason(s) for arrest being "voided" (see step "7")
(2) Enter "**VOIDED ARREST**" across the top of the **OLBS ARREST WORKSHEET/OMNIFORM – ARREST REPORT**.
- b. If prisoner was already processed and an arrest number generated for booking purposes (not voided by arresting officer):
(1) Log into "Omniform System" and select the "Void an Arrest" option under caption "Supervisor Functions" and enter applicable information necessary to void the arrest.
(2) Assign uniformed member of the service to prepare, fax and forward **ARREST REPORT SUPPLEMENT (PD244-157)** to borough court section concerned without delay.

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**DESK OFFICER
/SUPERVISOR
CONCERNED
(continued)**

- a. Ensure the arresting/assigned officer indicates under "Details" section of the **ARREST REPORT SUPPLEMENT** the reason the arrest was voided (see step "7").
- (3) Enter "**VOIDED ARREST**" across top of the **ARREST REPORT SUPPLEMENT** and **OLBS ARREST WORKSHEET/OMNIFORM ARREST REPORT**.
9. Distribute **OLBS ARREST WORKSHEET/OMNIFORM ARREST REPORT** and **ARREST REPORT SUPPLEMENT**, as applicable, in normal manner.
10. Ensure copies of all reports are forwarded to the following:
 - a. Patrol borough commander concerned
 - b. Commanding Officer, Identification Section
 - c. Borough court section concerned
 - d. Commanding officer of arresting officer, if different from precinct of occurrence.
11. Notify borough court section of the voided arrest information
12. Make Command Log entry.
13. Notify precinct commanding officer.

**PATROL
BOROUGH
COMMANDER**

14. Review report(s) and if satisfied that the release of prisoner was proper, signify by endorsement and return to originating commanding officer.

REQUEST BY ASSISTANT DISTRICT ATTORNEY TO "VOID" AN ARREST:

**ARRESTING
OFFICER**

15. Inform desk officer/borough court section supervisor that Assistant District Attorney is requesting arrest be "voided" and not "Decline Prosecution."

**DESK OFFICER
/BOROUGH
COURT
SECTION
SUPERVISOR**

16. Confer with Legal Bureau regarding request by Assistant District Attorney.

**LEGAL
BUREAU
ATTORNEY**

17. Confer with Assistant District Attorney concerned and attempt to resolve the issue.
18. Request Assistant District Attorney to treat case as a "Decline Prosecution."
 - a. Confer with supervisory Assistant District Attorney if the Assistant District Attorney will not draw up complaint.
 - b. If all attempts to resolve the issue do not result in the complaint being drawn and the Assistant District Attorney will not treat the case as a "Decline Prosecution" case, then the arrest shall be deemed voided as per the Assistant District Attorney.
19. Notify the desk officer, precinct of arrest and the borough court section supervisor to release the prisoner in accordance with this procedure.

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- DESK OFFICER** 20. Make Command Log entry and include the following information:
- Arrest "voided" due to Assistant District Attorney refusal to consider charges
 - Name of the Legal Bureau attorney consulted
 - Name of the Assistant District Attorney
 - Name of the District Attorney's Office supervisor
 - Borough court section supervisor concerned.
21. Ensure all information in step "20" is included in the "Narrative" section of the **OLBS ARREST WORKSHEET/OMNIFORM ARREST REPORT** or the "Details" section of **ARREST REPORT SUPPLEMENT**, as applicable.
22. Notify borough court section supervisor (via Telephone Message) of final status of prisoner.

**ADDITIONAL
DATA****DEPARTMENT POLICY**

If the precinct or patrol borough commander is not satisfied that the release was proper, the circumstances of the release will be reported to the First Deputy Commissioner and the Chief of Department.

The authority to release a prisoner by means of this procedure rests solely with the Police Department.

*When an arrest is voided for any reason and the person being released has been fingerprinted via Live Scan, one copy of the **ON LINE BOOKING SYSTEM ARREST WORKSHEET/OMNIFORM ARREST REPORT** or the **ARREST REPORT SUPPLEMENT**, as appropriate, is to be delivered to the borough court section intake supervisor, borough of arrest. The desk officer will ensure that this is done in a timely manner.*

*The borough court section intake supervisor, borough of arrest, will prepare a communication detailing the circumstances of the voided arrest. This communication will be **FAXED** to the Division of Criminal Justice Services with the request to seal the defendant's record.*

All borough court section intake facilities will now maintain a bound log with the following information regarding voided arrests:

- *The date that the **ARREST REPORT SUPPLEMENT** was received*
- ***OLBS WORKSHEET** arrest number*
- *Precinct and location of arrest*
- *Name, shield, and command of arresting officer*
- *Date and time the Division of Criminal Justice Services was notified*
- *Name of the representative from the Division of Criminal Justice Services who acknowledges receipt of the communication from the NYPD along with the date and time of its receipt.*

The Legal Bureau is responsible for logging and tracking inquiries made in accordance with the voiding of any arrest at the request of the Assistant District Attorney. The Legal Bureau may be contacted Monday through Friday, 0700 to 2300 hours. At other times, and on the weekends, the Legal Bureau duty attorney may be reached through the Operations Division.

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RELATED PROCEDURES

Release of Prisoners Arrested by Other Police Agencies (P.G. 210-15)
Release of Prisoners at the Complaint Room at Direction of the Assistant District Attorney
(P.G. 210-16)

FORMS AND REPORTS

ACTIVITY LOG (PD112-145)
ARREST REPORT SUPPLEMENT (PD244-157)
OLBS ARREST WORKSHEET (PD244-159)

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Section: Prisoners		Procedure No: 210-16	
RELEASE OF PRISONER AT THE COMPLAINT ROOM BY DIRECTION OF THE ASSISTANT DISTRICT ATTORNEY			
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PURPOSE

To release a prisoner when the Assistant District Attorney elects not to prosecute a defendant and designates the arrest case as "Decline Prosecution."

PROCEDURE

Upon being informed by the Assistant District Attorney that the prisoner is to be released and the arrest case has been designated as "Decline Prosecution."

ARRESTING OFFICER

1. Obtain copy of the District Attorney's Office Decline Prosecution Letter. (Either via FAX when processing at command or, in person, when processing at the complaint room.)

NOTE

When an Assistant District Attorney elects not to prosecute an arrest case which was processed either via the Expedited Affidavit Program or Supporting Deposition Program, borough court section personnel will obtain a copy of the District Attorney's Office Decline Prosecution Letter and follow the borough court section's release of prisoner procedures.

2. Make complete **ACTIVITY LOG (PD112-145)** entry.
3. Notify desk officer.

WHEN ARRESTING OFFICER IS PRESENT AT PRECINCT OF ARREST AND INFORMED BY AN ASSISTANT DISTRICT ATTORNEY THAT THE ARREST CASE HAS BEEN DESIGNATED AS "DECLINE PROSECUTION"

DESK OFFICER

4. Direct arresting officer to determine if prisoner has an active warrant.

ARRESTING OFFICER

5. Conduct a warrant name check (WNAM) via FINEST SYSTEM.
6. Ascertain from the borough court section if the Criminal History printout ("Rapsheet") has been received.

DESK OFFICER

7. Direct prisoner be immediately released, if prisoner is present at command or a hospital facility, after it has been established there is no active warrant through warrant check and "Rapsheet."

NOTE

The release of a prisoner will not be delayed solely because the "Rapsheet" has not yet been received.

8. Direct the arresting officer to process the arrest solely on the authority of the active warrant, if the prisoner has active warrant.

NOTE

In a designated "Decline Prosecution" case, the arresting officer will continue to process the arrest case only when it has been determined that the prisoner has an active warrant. The arresting officer will not process the prisoner on any of the original arrest charges that were designated by the Assistant District Attorney as "Decline Prosecution."

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- DESK OFFICER** 9. Notify borough court section supervisor of either prisoner's release, or that prisoner is being processed solely on the authority of active warrant. (This will enable the borough court section to make the appropriate On Line Prisoner Arraignment (OLPA) system entries.)
- (continued)
10. Notify the borough court section supervisor that an Assistant District Attorney has designated the arrest case as "Decline Prosecution", if the prisoner is en route to, or present at the borough court section.
11. Direct arresting officer to FAX the District Attorney's Office Decline Prosecution Letter to the borough court section supervisor.
- a. Borough court section's release of prisoner procedures will then be followed.
12. Make appropriate log entries and ensure that the District Attorney's Office form letter is filed.

IF ARRESTING OFFICER IS PRESENT AT THE COMPLAINT ROOM AND INFORMED BY AN ASSISTANT DISTRICT ATTORNEY THAT THE ARREST CASE HAS BEEN DESIGNATED AS "DECLINE PROSECUTION"

- ARRESTING OFFICER** 13. Notify, and provide a copy of the District Attorney's Office Decline Prosecution Letter to the borough court section supervisor.

NOTE

In a case where a prisoner is hospitalized, the arresting officer must also notify and FAX a copy of the District Attorney's Office Decline Prosecution Letter to the command's desk officer who will direct the release of the prisoner after establishing that there is no active warrant. If the prisoner has an active warrant, the desk officer will assign a uniformed member of the service to process the prisoner solely on the authority of the active warrant.

14. File the District Attorney's Office Decline Prosecution Letter in arrest folder, upon return to command.

BOROUGH COURT SECTION SUPERVISOR

15. Have the appropriate OLPA system entries made when notified by the desk officer that the prisoner has been released, or that the prisoner will be processed solely on the authority of an active warrant.
16. Direct, when notified by a desk officer or by an arresting officer in person, that an arrest case of a prisoner who is en route to, or present at, the borough court section has been designated as "Decline Prosecution," and is in receipt of a District Attorney's Office Decline Prosecution Letter:
- a. The immediate release of the prisoner after the borough court section has determined that there is no active warrant. The release of a prisoner will not be delayed solely because the "rapsheet" has not been received. (This procedure will be adhered to regardless of prisoner's lodging location [e.g. borough court section or lodged over night at the precinct stationhouse.]) OR

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SECTION
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- b. Direct either the arresting officer, if present, or have borough court section personnel process the prisoner solely on the authority of the active warrant, if the prisoner has an active warrant. (In this case, the arresting officer will only be utilized to process the prisoner when the prisoner is lodged at the borough court section and the arresting officer is present at the courthouse.)

NOTE

When a prisoner who is to be released is lodged over night at a precinct stationhouse, the borough court section supervisor must notify and FAX a copy of the District Attorney's Office form letter to the desk officer concerned. Upon receipt of a District Attorney's Office form letter, the desk officer of the precinct concerned will release prisoner and make appropriate log entries.

**FORMS AND
REPORTS**

ACTIVITY LOG (PD112-145)

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